

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MARVEL CHARACTERS, INC.,

Plaintiff,

v.

LAWRENCE D. LIEBER,

Defendant.

LAWRENCE D. LIEBER,

Counterclaimant,

v.

MARVEL CHARACTERS, INC., and DOES  
1-10, inclusive,

Counterclaim-Defendants.

MARVEL CHARACTERS, INC.,

Plaintiff,

v.

PATRICK S. DITKO, in his capacity as  
Administrator of the Estate of Stephen J.  
Ditko,

Defendant.

PATRICK S. DITKO, in his capacity as  
Administrator of the Estate of Stephen J.  
Ditko,

Counterclaimant,

v.

MARVEL CHARACTERS, INC. and DOES  
1-10, inclusive,

Counterclaim-Defendants.

Case No.: 1:21-cv-7955-LAK  
and consolidated cases  
21-cv-7957-LAK and 21-cv-7959-LAK

**JOINT STIPULATION AND  
[PROPOSED] ORDER REGARDING  
PRETRIAL SCHEDULE**

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MARVEL CHARACTERS, INC.,

Plaintiff,

v.

KEITH A. DETTWILER, in his capacity as  
Executor of the Estate of Donald L. Heck,

Defendant.

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KEITH A. DETTWILER, in his capacity as  
Executor of the Estate of Donald L. Heck

Counterclaimant,

v.

MARVEL CHARACTERS, INC. and DOES  
1-10, inclusive,

Counterclaim-Defendants.

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### **STIPULATION**

Plaintiff and Counterclaim-Defendant Marvel Characters, Inc. (“Marvel”) and Defendants and Counterclaimants Lawrence D. Lieber, Patrick S. Ditko, and Keith A. Dettwiler (collectively, the “Parties”) stipulate as follows:

**WHEREAS**, the Court issued the Third Amended Scheduling Order for the above three referenced cases (which have been consolidated for pretrial purposes) such that motions for summary judgment are due on or before April 7, 2023.<sup>1</sup>

**WHEREAS**, the Parties all intend to file cross motions for summary judgment;

**WHEREAS**, Defendants-Counterclaimants’ counsel, Marc Toberoff must undergo two important medical surgeries between today’s date and April 7, 2023, which will severely limit his ability to work on Defendants-Counterclaimants’ summary judgment motion due April 7, 2023;

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<sup>1</sup> See Order (ECF No. 51), Marvel Characters, Inc. v. Lieber, No. 1:21-cv-07955-LAK (S.D.N.Y.); Order (ECF No. 46), Marvel Characters, Inc. v. Ditko, No. 1:21-cv-07957-LAK (S.D.N.Y.); Order (ECF No. 49), Marvel Characters, Inc. v. Dettwiler, No. 1:21-cv-07959-LAK (S.D.N.Y.).

**WHEREAS**, Defendants-Counterclaimants have asked Marvel to agree to a four-week extension of the deadline to file motions for summary judgment in light of Mr. Toberoff's forthcoming medical surgeries;

**WHEREAS**, Marvel has advised Defendants-Counterclaimants that it agrees to the requested extension subject to approval of the Court;

**WHEREAS**, to the extent that the deadline for motions for summary judgment is extended, the Parties agree that an extension of the joint pretrial submissions is also warranted; and

**WHEREAS**, recognizing that the Third Scheduling Order states that no further extensions will be permitted, these modifications will not meaningfully delay the overall progress of the case and may actually increase the efficient progression of the case.

Based on the foregoing, **IT IS HEREBY STIPULATED** by and between the Parties, through their respective counsel of record, subject to the Court's approval, that:

1. The deadline to submit motions for summary judgment shall be continued to May 5, 2023.
2. The deadline to submit the joint pretrial order shall be continued to August 29, 2023.<sup>2</sup>

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<sup>2</sup> The Parties selected this date as it would align the submission of the joint pretrial order in this case with the deadline for similar submissions in the related pending matter in the Central District of California. *Marvel Characters, Inc. v. Rico*, No. 2:21-cv-07624-DMG-KES.

Dated: March 16, 2023

**O'MELVENY & MYERS LLP**

By: /s/ Daniel M. Petrocelli  
Daniel M. Petrocelli

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Dated: March 16, 2023

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By: /s/ Marc Toberoff  
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*Attorneys for Lawrence D. Lieber, Patrick S.  
Ditko, and Keith A. Dettwiler*

**SO ORDERED:**

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Hon. Lewis A. Kaplan  
United States District Judge

DATE: \_\_\_\_\_